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to the

House Financial Services Committee

On "Sarbanes-Oxley: Two Years of Market and Investor Recovery"

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Good morning Chairman Oxley, Ranking Member Frank and distinguished members of the Committee. Thank you for this opportunity to present my views on the impact of the Sarbanes-Oxley Act over the last two years.

I am Joseph V. Del Raso, a partner in the law firm of Pepper Hamilton LLP. My practice focuses on corporate and securities matters, particularly on matters related to securities regulation. I served as an attorney/adviser with the Securities and Exchange Commission in the 1980s, and I have served as a member of the board of directors of both public and private companies. Having experience on the regulatory side, as a lawyer in private practice and as a corporate board member, I believe that I offer the Committee an important perspective on the practical effect of the Sarbanes-Oxley Act over the past two years.

Overall, I believe that impact has been a positive one. While there are costs – in some cases material costs – and occasional perceived regulatory overkill associated with implementation of the Act, it has done much to restore the faith of investors in the way in which public companies operate and report their financial results. Just as importantly, it has helped give directors and corporate officers the tools they need to meet their obligations and be accountable to shareholders. I commend the Committee for its level-headed and responsible approach to this Act.

Positive Changes

I first would like to address the positive impact of the Sarbanes-Oxley Act on domestic issuers. The Act has:

- Increased the awareness of the need for corporate accountability and transparency, and given greater attention to best practices in corporate governance.
- Prompted procedures to establish internal controls to ensure compliance.
- Highlighted the need to take prompt remedial action when problems are uncovered, in order to reassure the global markets of the safety and integrity of our capital markets and those issuers who access them.
- Increased the protection of shareholder interests, thereby increasing shareholder confidence.
- Highlighted the need for improved risk management and should produce the long-term effect of mitigating the costs of insurance, indemnities and potentially large awards (including punitive damages and governmental fines) for systemic failure of the corporate entity.
- Increased attention to the need for accountability directly to shareholders in matters of corporate governance.

Costs and the Perception of Regulatory Overkill

Of course, the implementation of the Sarbanes-Oxley Act has not entirely been a bed of roses. The costs of compliance often can be burdensome. Reviewing internal financial controls, improving those mechanisms when necessary and ensuring that the processes are well-documented is time-consuming and costly, in some cases costing companies millions of dollars and thousands of hours annually.

I believe that what corporate officers and directors need to keep in mind is that the costs of compliance is not nearly as burdensome as the costs of failing to comply. What was at risk in 2002 – what this Act was designed to prevent – was the threatened loss of confidence by investors throughout the world in our capital markets. That loss of confidence doesn't just effect companies with poor corporate governance, or negligent or outright criminal leadership – good companies as well as bad, and millions of investors, suffer the consequences when people lose faith in how companies operate and report their results.

I look at the costs associated with compliance as a necessary and prudent investment in the long-term stability and success of our capital markets.

However, we must be careful not to stifle entrepreneurship and capital formation for emerging businesses. The initiatives of the SEC in the early 1980s to adopt rules to allow smaller companies access to the public capital markets produced very positive outcomes. Some may argue that smaller issuers may not be suited for public ownership if they cannot afford the cost of Sarbanes-Oxley compliance, but that is not the appropriate focus. We should always encourage small businesses to grow, and not overburden them with intrusive regulation.

On the other hand, we have learned that an environment of careless behavior and lack of respect for both the investor and the government's oversight and regulation produces nothing but financial and societal losses. We must balance the need for entrepreneurial freedom and reasonable governmental oversight, and for that reason it may be necessary to revisit and fine-tune this legislation from time to time.

I urge this Committee as it examines future regulatory actions to be careful to not overburden the average issuer with overzealous enforcement and unreasonable intervention. Do not pile on with additional regulations that make compliance more difficult or that are simply not practical. Further regulatory action should be adopted only after a thorough analysis shows that the benefits of the new regulations outweigh the risks that it will make compliance overly burdensome on the average issuer.

Overzealous regulatory action and enforcement also can poison the atmosphere between regulators and the industry, and stifle the discipline and sense of cooperation between the

government and those it regulates. The vast majority of corporate officers and directors act ethically and take their fiduciary responsibilities seriously, and will welcome legislation, regulation and guidance that helps them meet their obligations to shareholders. However, when the regulators and the regulated find themselves in a constant adversarial atmosphere, the spirit of compliance and good corporate citizenship may erode into one of combat mentality. Operating in that environment is not consistent with our democratic traditions of creativity and free enterprise.

Corporate Governance

The impact of the Sarbanes-Oxley Act in the area of corporate governance has been profound. Independent directors are exercising their responsibilities and paying much more attention to detail – I can tell you from personal experience that board meetings are longer and have much broader agendas. Audit committees are meeting more frequently and are increasing the number of executive sessions with auditors. Special committees, especially those charged with internal investigations, are moving very quickly when troubling matters surface. No longer are independent directors satisfied with the assurances of management that everything is in order, or worse, sweeping corporate problems under the rug.

The Act also has increased shareholder activism. In general, while this may be viewed as a good thing, boards need to be careful not to confuse the political and social agendas of shareholder initiatives with their obligation to meet the goals of the majority of shareholders and to adhere to best practices.

Impact on Global Markets

I would like to particularly note the impact of the Sarbanes-Oxley Act on the global financial markets. When first enacted into law, this legislation was met with some trepidation by foreign issuers. In speaking with foreign diplomats and issuers, I was impressed with their positive reaction to the responses of our regulators in this area. The SEC in particular worked quickly and effectively to harmonize the effect of compliance with the special concerns of foreign issuers.

Also, I had the opportunity last March to help organize a symposium related to this topic in Italy at the American University of Rome. The participants included high-level securities regulators and issuers from several foreign countries. The consensus of the participants was that to America's credit, when faced with the severity of a crisis such as the corporate scandals of 2002, we are quick to react and remedy the situation. The swiftness, both in prosecution and in legislation, reassured the global markets that America was serious about protecting the interests of all investors.

It also is interesting to note that issuers who sought to bypass their Sarbanes-Oxley responsibilities by listing on foreign exchanges have not been able to find much relief. For example, regulatory requirements for listing companies on the Exchange in London also have been intensified.

Long-Term Effects

Returning for a moment to the costs of compliance, I would offer one more comment. I view the costs of implementing compliance systems as similar to that of installing fire protection systems in buildings. While it may be cheaper to build an office building without sprinklers, in the long run the increased cost of insurance would likely outweigh the initial savings. More to the point, if a fire starts to smolder, it either can be quickly extinguished with little loss when the alarm is tripped (if the building has an effective fire protection system) or ignite into a raging inferno that consumes the entire edifice. The corporate entity is no different – early detection and action is obviously preferred to the risk of a catastrophic loss.

I have noticed an increased interest is developing programs to educate officers and directors. Professional firms and academic institutions have already designed and offered support to corporate directors and executives in these areas.

Conclusion

Mr. Chairman and distinguished members of the Committee, thank you again for the opportunity to testify today on the impact of this important piece of legislation. Much of the commentary after the passage of the Act called it the most sweeping securities reform since the passage of the Exchange Act some 70 years ago. I believe that is true. No law can completely prevent scandals

such as the collapse of Enron, WorldCom and Global Crossing. In the end, you can't legislate personal character and morality. But I strongly believe that the Sarbanes-Oxley Act has reduced the risk of such scandals. Like many corporate officers, directors and professionals, I may not agree with or like every aspect of this legislation, but if it continues to have the desired effect – the ongoing restoration of public confidence in the capital markets – then the Sarbanes-Oxley Act has indeed met its objectives.

I welcome your questions.